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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,859

10/11/2006

Robert Plourde JR.

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HOWERY LLP

C/O IP DOCKETING DEPARTMENT

2941 FAIRVIEW PARK DRIVE SUITE 200

FALLS CHURCH, VA 22042

EXAMINER

LEWIS, PATRICK T

ART UNIT

PAPER NUMBER

1623

MAIL DATE

DELIVERY MODE

08/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,859	Applicant(s) PLOURDE ET AL.	
	Examiner Patrick T. Lewis	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6 and 8-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-6 and 8-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 4-6 and 8-19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 7,368,438 in view of Marconi et al. US 4,591,596 (Marconi) and Dyson Veterinary Dermatology (1997), Vol. 8, pages 227-233 (Dyson).

The '438 patent differs from the instantly claimed invention in that the method of the '438 patent is drawn to "treating diseases or conditions associated with increased platelet aggregation"; however, one of ordinary skill in the art would readily envision "pain" as being a "conditions associated with increased platelet aggregation".

Marconi demonstrates that compounds useful for treating pain are as useful for treating inflammation and/or platelet aggregation. See claims.

Dyson teaches, "...cutaneous wound healing can be subdivided into three overlapping phases: (a) acute inflammation, (b) proliferation or granulation tissue formation with which wound contraction is associated, especially in those animals with a highly mobile skin, and (c) tissue remodeling. Inflammation is initiated by injury and is generally of short duration, the subsequent phases each being dependent on the preceding phase...Acute inflammation should be considered not as a disease but as an essential part of the healing process. It is, however, characterized by pain, heat,

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redness, swelling and loss of function and because of this it is often treated with anti-inflammatory drugs...” See page 228.

5. Claims 1, 4-6 and 8-19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 7,335,648 in view of Marconi et al. US 4,591,596 (Marconi) and Dyson Veterinary Dermatology (1997), Vol. 8, pages 227-233 (Dyson).

The '648 patent differs from the instantly claimed invention in that the method of the '648 patent is drawn to "treating diseases or conditions associated with increased platelet aggregation"; however, one of ordinary skill in the art would readily envision "pain" as being a "conditions associated with increased platelet aggregation".

Marconi demonstrates that compounds useful for treating pain are as useful for treating inflammation and/or platelet aggregation. See claims.

Dyson teaches, "...cutaneous wound healing can be subdivided into three overlapping phases: (a) acute inflammation, (b) proliferation or granulation tissue formation with which wound contraction is associated, especially in those animals with a highly mobile skin, and (c) tissue remodeling. Inflammation is initiated by injury and is generally of short duration, the subsequent phases each being dependent on the preceding phase...Acute inflammation should be considered not as a disease but as an essential part of the healing process. It is, however, characterized by pain, heat, redness, swelling and loss of function and because of this it is often treated with anti-inflammatory drugs...” See page 228.

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Conclusion

6. Claims 1, 4-6 and 8-19 are pending. Claims 1, 4-6 and 8-19 are rejected. No claims are allowed.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick T. Lewis whose telephone number is 571-272-0655. The examiner can normally be reached on Monday - Friday 10 am to 3 pm (Maxi Flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dr. Patrick T. Lewis/
Primary Examiner, Art Unit 1623

ptl